



the Court. Polaris commends the GALs for concluding that the settlements were appropriate and in the best interests of the minor plaintiffs. Polaris has no objection to the substance of the GALs' conclusions, but does object to the GALs' recommendation that Polaris be required to pay the GALs' fees and costs.

### **DISCUSSION**

On September 8, 2021, the Court appointed Brooke Ginsburg Guerrero as the GAL for K.G.A., a minor. The Court also appointed Faith Bruner as the GAL for B.A.K. and B.S.K., minors. When this Court appointed the GALs, the Court specifically stated:

The parties shall file a response no later than seven days after receipt of Ms. Ginsburg Guerrero and Ms. Bruner's reports. ***The Court assumes that Plaintiffs shall bear the cost of all guardian ad litem fees.*** If that is not the case, the parties shall advise the Court in their responses.

(Dkt. No. 163)(emphasis added).

The GALs have now reviewed key documents in the case, spoken with counsel for all parties, and consulted with the parents of the minor Plaintiffs. On October 27, 2021, the GALs submitted their confidential Reports to the Court. Both GALs found:

- the aggregate settlement amount to be fair and reasonable;
- the allocation of the settlement proceeds equally among the four Plaintiffs to be fair and reasonable;
- that Plaintiffs' counsel should be awarded a 37% attorney's fee out of each Plaintiff's recovery;
- that Plaintiffs' counsel's expenses should be reimbursed to Plaintiffs' counsel out of each Plaintiff's recovery;
- that the minors' settlement proceeds be used to purchase annuities to allow for tax-free growth and the payment of college expenses; and
- that Polaris should be ordered to pay the GALs' fees and expenses.

Polaris has no objection to any of the recommendations in the Reports other than the proposal that Polaris pays the GALs' fees and expenses. As part of this settlement, Polaris agreed to pay a one-time lump-sum settlement payment as set forth in a Confidential Settlement Agreement and General Release (the "Settlement Agreement") between the parties. In exchange, Plaintiffs agreed to provide Polaris with a general release, dismiss the pending litigation, and maintain the confidentiality of the settlement terms. In addition, pursuant to Paragraph 8(c) of the Settlement Agreement, Plaintiffs agreed as follows:

Liens, Subrogation Claims, and Other Expenses. Plaintiffs further warrant and represent that all valid liens and claims for reimbursement; all Medicare liens; Medicare Conditional Payments; all claims under or subject to the Medicare Secondary Payer statute (42 U.S.C. § 1395(y)); all subrogation interests; all medical and hospital expenses; all attorney's fees, expert and consultant fees, and other expenses; and all other costs and obligations arising out of, or related to, or in connection with the Incident, the Subject Vehicle, or the Litigation either have been paid or will be resolved without any further demand upon, or liability of, the Released Parties.

(Settlement Agreement ¶ 8(c).) Based on the discussions of counsel for the parties at the time of the settlement and as memorialized in Paragraph 8(c) of the Settlement Agreement, Polaris understood that it was obligated to pay the one-time lump-sum settlement payment and nothing more. This provision limits Polaris's liability to the Settlement Amount, and places responsibility on Plaintiffs for "all other costs and obligations" which would include the GALs' fees and expenses. The parties engaged in long and hard settlement negotiations that stretched for three weeks after the mediation, and Polaris only agreed to come up to the final Settlement Amount with the understanding that it would not be asked to pay anything additional. This agreement was memorialized in Section 8(c) of the Settlement Agreement, capping Polaris's financial contribution at the Settlement Amount. Consistent with Section 8(c), Polaris asks the Court to order Plaintiffs to pay the GALs' reasonable and necessary fees and expenses.

**CONCLUSION**

For the reasons set forth above, Defendants ask this Honorable Court to Order the Plaintiffs to pay the reasonable and necessary fees and expenses of the Guardians Ad Litem, and for such other and further relief as this Court finds just.

Date: November 3, 2021

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this the 3<sup>rd</sup> day of November, 2021, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to each counsel of record. To the extent any such counsel is not registered for such electronic delivery, the foregoing document will be served in accordance with the Federal Rules of Civil Procedure.

/s/ Scott A. McMillin  
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